DAVID PAQUIN

IBLA 94-889 Decided December 16, 1997

Appeal of three Decisions by the California State Office, Bureau of Land Management, declaring 14 lode mining claims abandoned and void for failure to pay annual rental fees or obtain a small miner exemption by August 31, 1993. CAMC 64403 through CAMC 64410, CAMC 67117 through CAMC 67121, and CAMC 107537 through CAMC 107539.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Plan of Operations--Federal Land Policy and Management Act of 1976: Wilderness--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   A mining claimant is not required to file a notice prior to undertaking the activities identified at 43 C.F.R. § 3802.1-2. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374 (1992), however, required mining claimants to file a valid notice or obtain an approved plan of operations in order to obtain an exemption from rental fees.

APPEARANCES: David Paquin, Santee, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

David Paquin has appealed, on behalf of himself and other claim owners, 1/ three Decisions by the California State Office, Bureau of Land Management (BLM), dated August 23, 1994, declaring a total of 14 lode mining claims abandoned and void for failure to pay annual rental fees of $100 per year for the 1993 and 1994 assessment years, or obtain a small miner exemption, by August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993.

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1/ David Paquin is the father of Dennis and Ron Paquin and is entitled to represent members of his family on appeal. 43 C.F.R. § 1.3(b)(3)(i).

One Decision addresses the Silver Hill No. I (CAMC 64403), the Silver Hill No. III (CAMC 64405), and the Lost Gold No. II (CAMC 64409) lode mining claims, for which Ron Paquin filed a certificate of exemption on August 30, 1993. It notes that the Appropriations Act required a claim to be under a valid notice or plan of operations to qualify for an exemption and that 43 C.F.R. § 3833.1-6(a)(4) (1993) also provides that a claim shall be under a notice or approved plan of operations. The Decision also notes that on January 20, 1993, BLM had denied approval of a plan of operations for the claims and that this Board affirmed its Decision on March 25, 1994. Dave Paquin, 129 IBLA 76, 80 (1994). Finding that the claims were not held under a notice or valid plan of operations, BLM concluded that "it appears that the claimant has failed to qualify for an exemption from payment of rental fees (small miner exemption) for the 1993 and 1994 assessment years." (Decision at 2.) Because rental fees were not paid for the claims, BLM declared them abandoned and void.

The second Decision addresses the Silver Hill No. II (CAMC 64404), the Silver Hill Nos. IV and V (CAMC 64406 and CAMC 64407), the Lost Gold No. I (CAMC 64408), the Lost Gold Nos. III and IV (CAMC 67117 and CAMC 67118), the Silver Hill No. VI (CAMC 67119), and the Silver Hill No. VIII (CAMC 107539) lode mining claims. The record shows that on August 30, 1993, Dave Paquin filed a certificate of exemption for the claims, except the Silver Hill No. V. The certificate also included the Silver Hill No. IX (CAMC 67121, originally the D & W) and the Horseshoe No. I (CAMC 64410) for which he paid mining claim rental fees. Like the first Decision, the second points out that BLM's Decision denying approval of a plan of operations was upheld by the Board, and it did not appear that the claims qualified for an exemption. Because rental fees were not paid for the eight claims, BLM declared them abandoned and void.

The third Decision addresses the Silver Hill No. II (CAMC 64404) (also subject to the second Decision), the Silver Hill No. VII (CAMC 67120), the Horseshoe Nos. III and IV (CAMC 107537 and CAMC 107538), and the Silver Hill No. VIII (CAMC 107539) (also subject to the second Decision) lode mining claims. On August 30, 1993, Dennis Paquin filed a certificate of exemption for them and also for the Silver Hill No. V. Like the others, the Decision notes that denial of approval for a plan of operations had been upheld by the Board, and it did not appear the claims qualified for an exemption. Because rental fees were not paid for the five claims, BLM declared them abandoned and void.

As noted above, the record contains Certifications of Exemption from Payment of Rental Fee that Paquin filed with the California State Office, BLM, on August 30, 1993 (Form 3830-1) for the Silver Hill II and other claims. In response to the requirement on the form to enter "[t]he ten or fewer mining claims listed below are operated under a Notice, Plan of Operations, Special Use Permit or other State or local permit, as described in the regulations at 43 CFR 3833.1-6, issued by," Paquin entered: "El Centro Resource Area BLM. Renewed minimal exploration plan while waiting on

access appeal (CA943.3) (RMF CA 067.20) (IBLA 93-286) CAMC 64403 3802." In response to these certifications, the California State Office issued a Notice to Paquin on July 27, 1994, entitled "Additional Information Requested" stating:

> As submitted, the certificate listed a proposed mining plan issued by the El Centro office of the Bureau of Land Management. BLM had denied approval of the plan and, at the time the certificate was submitted, the matter was on appeal at the Interior Board of Land Appeals (IBLA) under Docket Number 93-286. On March 25, 1994, the IBLA affirmed BLM's decision denying the mining plan (129 IBLA 76).
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> In order for you to qualify for the exemption, the original certification of exemption form must be filed in this office within 30 days from the receipt of this Notice. The certification must name a valid Notice or Plan of Operations or permit. In addition, the serial number(s) assigned to the notice, approved Plan of Operations, or Permit must also be included on the application.

(Notice at 1-2.) The BLM returned the original certificates "in order for [Paquin] to include additional information."

The BLM did not wait for Paquin to reply to the July 27, 1994, Notice, however, and issued its Decisions concerning the claims on August 23, 1994.

Paquin responded to the Decisions by writing to the California State Office on August 27, 1994. He noted that he had prepared a response to the July 27, 1994, Notice ready to mail and that BLM's Decisions "really confused the issue more." In the response he had prepared, Paquin states:

> [W]e did not know at the time that we filed the appeal that it would take so long to get an answer nor that we would need an approved plan to hold the claims for the next year. We expected to go in by backpack and do the assessment work by hand as we have had to do for many years. * * * When Mr. Koski at El Centro BLM refused our appeal he stated to contact Mr. Park at his office. We met with Richard park [and] discussed a program of continued sampling and chemical testing and electronic mapping, which was agreed to and he was to send us a letter of authorization. However this letter did not come; instead, I received a notice from Mr. Koski that we could not do a plan amendment as long as the appeal was pending and to contact Mr. Park again. So on our next trip over to the claims we stopped at the El Centro BLM again[,] asked Mr. Park why? and that we needed it to do our assessment work. There were a couple of bleep bleeps and he went to a back room and there was a comment that "I guess that's another one that got intercepted" he came back out and

> said he would give us a note on his card until they could get another letter out. * * * With this in hand we did considerable chemical and electronic sampling during Nov. and Dec. 93 and Jan., Feb., and Mar., of 94 and still no letter * * *.

In his August 27, 1994, letter Paquin states that the El Centro BLM office "will not * * * authorize a plan of operations and refuses to respond to a notice * * * in WSA [wilderness study area] 356" but that BLM personnel had informed him that the other claimants could perform assessment work under 43 C.F.R. § 3802.1-2. He provides a copy of an August 3, 1993, letter from Ron Paquin to the El Centro office concerning the Silver Hill Nos. I and III and the Lost Gold No. II mining claims, "requesting consideration of a notice to hold on the above mineral claims as provided by 43 CFR 4302.0-6 [sic] and 3802.1-2 (a) (b) and (d)" and "a statement and a number for our records." The August 3, 1993, letter states: "It is our understanding that this does not require a plan of operations in a WSA." He also provides an August 11, 1993, letter from G. Ben Koski, Area Manager at El Centro, to Dave Paquin acknowledging receipt "of a notice of intent to hold that you sent to the State Office" for the same mining claims. Koski's August 11, 1993, letter states that "information regarding the 'Rental Fee' for the years 1993 and 1994" was enclosed and that questions could be directed to Richard Park at BLM. In his August 27, 1994, letter Paquin asks:

> Is this [August 11, 1993, letter] the notice [Ron Paquin] needs to complete his exemption requirements? If so please advise us; if not[,] what notice is[,] because I'm sure you know as well as I do that it is impossible to get a plan of operations approved in a WSA. If this is the valid notice that we need, I believe El Centro BLM has withheld and failed to respond to our correspondence requesting a notice to proceed with the only activities allowed in a WSA.

Paquin provides a copy of the note Park wrote on the back of his business card. Dated November 1, 1993, it states: "Dave, Ron, Dennis Paquin. Duplicate letters being sent to allow continuation of exploratory nondisturbing work to continue from '90, '91, '92 Richard R. Park." In addition, Paquin contends that, on another occasion, he was told by an employee in the El Centro office that it did not process notices but that "[w]e either send those to Sacramento or throw them in [the] waste can." Finally, in a statement of reasons submitted to the Board, Paquin raises a number of questions about the regulations at 43 C.F.R. Subpart 3802 governing plans of operations for mining claims within a WSA.

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 required that

> for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements

> contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

Pub. L. No. 102-381, 106 Stat. 1374, 1378 (1992). A substantially identical provision required mineral claimants to also pay by August 31, 1993, a $100 rental fee to hold an unpatented mining claim, mill or tunnel site during the assessment year beginning September 1, 1993. Id. The legislation provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." Id. at 1379.

The Act, however, created an exemption for a mineral claimant with 10 or fewer claims who was either producing between $1,500 and $800,000 in gross revenues per year or was "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization * * * under a valid notice or plan of operation" and had fewer than 10 acres of unreclaimed surface. Id. at 1378 (emphasis supplied). Such a claimant could "elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872," meet the requirements of 43 U.S.C. § 1744(a) and (c) (1994), "and certify the performance of such assessment work to the Secretary by August 31, 1993." Id. The same exemption was allowed for the 1993-94 assessment year. Id. at 1378-79.

Similar to the statute, the regulations promulgated by BLM required that, to qualify for an exemption, mining claims were to be under "[o]ne or more Notices or approved Plans of Operations pursuant to subparts 3802 or 3809 of this title," a notice or plan of operations filed with the National Park Service or the Forest Service, a special use permit from another Federal agency, or a reclamation permit if the surface estate is not Federal land. 43 C.F.R. § 3833.1-6(a)(4) (1993). An exemption application was required to provide "[t]he serial number(s) or other designation(s) assigned by the Federal land management agency to the Notice(s), Plan(s) of Operations, special use permits," or the number assigned by a state or local agency. Id. § 3833.1-7(d)(1).

[1] Title 43 C.F.R. Subpart 3809 allows an operator on a mining claim which is not within an area subject to wilderness review and who will not disturb more than 5 acres during a calendar year to simply "notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is

located." Id. § 3809.1-3(a). The notice is to provide specific information about the operation, but approval is not required. Id. §§ 3809.1-3(b) and (c). In contrast, Subpart 3802 applies to mining claims within a WSA, requiring an approved plan of operations prior to undertaking specified mining operations on lands under wilderness review. Id. §§ 3802.0-7, 3802.1-1. Other mining related activities may be undertaken without filing a plan of operations, including "occasionally removing mineral samples or specimens" and "[m]aking geological, radiometric, geochemical, geophysical or other tests and measurements * * *." Id. § 3802.1-2(a) and (d). Neither the regulations nor the Appropriations Act require a mining claimant to file a notice prior to undertaking the activities identified in 43 C.F.R. § 3802.1-2. The Act, however, as well as the regulations implementing it, require a valid notice or an approved plan of operations in order to obtain an exemption from rental fees. See 43 C.F.R. §§ 3833.1-6(a)(4)(i); 3833.1-7(d)(1); see also 58 Fed. Reg. 38191 (July 15, 1993) ("One comment asked whether miners whose mining activity is not at the plan or notice level can be eligible for the small miner exemption. The answer is no because, as stipulated in this section [3833.1-6] and the Act, the activity must be at plan or notice level as defined by the surface managing agency.") Although it is regrettable BLM did not clearly communicate to the Paquins that the only way they could maintain their claims in the WSA, absent an approved plan of operations, was to pay the required rental fees, BLM's decisions holding the claims void for failure to pay the fees or obtain an exemption by August 31, 1993, are correct.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the August 23, 1994, Decisions of the California State Office are affirmed.

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Will A. Irwin
Administrative Judge

I concur:

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James P. Terry
Administrative Judge